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RCE

PTO/SB/30 (09-04)

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# Request for Continued Examination (RCE) Transmittal

Address to:  
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Alexandria, VA 22313-1450

Application Number	10/052,771
Filing Date	January 23, 2002
First Named Inventor	Schillinger et al.
Art Unit	1661
Examiner Name	Para, A.
Attorney Docket Number	ASGR:002USD1

**This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.**  
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on \_\_\_\_\_

ii. ☐ Other \_\_\_\_\_

b. ☒ Enclosed

i. ☐ Amendment/Reply

iii. ☐ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/ Declaration(s)

iv. ☒ Other Interview Summary and Submission With RCE  
Under 37 C.F.R. 1.114

2. **Miscellaneous**

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. ☒ Other Petition for Extension of Time

3. **Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, or credit any overpayments, to

a. ☒ Deposit Account No. 50-1212/ASGR:002USD1. I have enclosed a duplicate copy of this sheet.

i. ☒ RCE fee required under 37 CFR 1.17(e)

ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)

iii. ☐ Other \_\_\_\_\_

b. ☒ Check in the amount of \$ 1,240.00 enclosed

c. ☐ Payment by credit card (Form PTO-2038 enclosed)

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature		Date	June 28, 2005
Name (Print/Type)	Robert E. Hanson	Registration No.	42,628

CERTIFICATE OF MAILING OR TRANSMISSION			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.			
Signature		Date	June 28, 2005
Name (Print/Type)	Robert E. Hanson	Date	June 28, 2005

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Schillinger *et al.*

Serial No.: 10/052,771

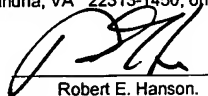
Filed: January 23, 2002

For: PLANTS HAVING RESISTANCE TO  
MULTIPLE HERBICIDES AND ITS USE

Group Art Unit: 1661

Examiner: Para, A.

Atty. Dkt. No.: ASGR:002USD1

CERTIFICATE OF MAILING 37 C.F.R. 1.8	
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June 28, 2005	
Date	Robert E. Hanson.

**INTERVIEW SUMMARY AND SUBMISSION WITH RCE UNDER 37 C.F.R. §1.114**

**Mail Stop RCE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This paper is submitted pursuant to the RCE filed concurrently herewith under 37 C.F.R. 1.114 and Notice of Appeal received by the Office on February 28, 2005; and is responsive to the Office Action dated September 23, 2004. A Petition for Extension of Time and payment of fees for the extension and RCE is attached. Should any additional fees become due in connection with this paper consider this paragraph a request and authorization to withdraw the appropriate fee under 37 C.F.R. §§ 1.16 to 1.21 from *Fulbright & Jaworski, L.L.P.* Account No. 50-1212/ASGR:002USD1.

Reconsideration of the application is respectfully requested.

## **INTERVIEW SUMMARY**

On June 15, 2005, Applicant's undersigned representative spoke with Examiner Para and Examiner Kubelik regarding the Notice of Abandonment mailed June 9, 2005. Applicants pointed out that the Notice of Abandonment was improperly issued in view of the twice rejection of the claims under 35 U.S.C. § 103 and Notice of Appeal dated February 23, 2005. The Examiners indicated that the Abandonment was initially sent on an understanding that the claims need be twice rejected on identical grounds to permit appeal under 35 U.S.C. § 134(a). It was recommended that Applicants discuss the matter with USPTO employee William Dixon. Applicants representative subsequently spoke with Mr. Dixon on June 16, 2005 and conveyed that the grounds of rejection need not be identical under 35 U.S.C. § 134(a). Mr. Dixon did not disagree and indicated that he would discuss this further internally.

On June 28, 2005 Applicants spoke with Examiner Kubelik regarding the Notice of Abandonment. The Examiner confirmed that the holding of abandonment should not have been sent and would be withdrawn. The Notice of Abandonment is therefore believed moot.

## **SUBMISSION AND RESPONSE TO OFFICE ACTION**

### **A. Status of the Application**

A Notice of Appeal was filed on February 23, 2005 and received by the Office on February 28, 2005. An Amendment and Response to Office Action was filed concurrently with the Notice of Appeal and is believed to have been entered. To the extent the paper has not already been entered, entry is respectfully requested pursuant to 37 C.F.R. §1.114. The current paper is in supplement to the earlier-filed Amendment and Response to Office Action Response and is responsive to the Office Action of September 23, 2004.

As explained above, a Notice of Abandonment was mailed in the case on June 9, 2005. The supervisory examiner has indicated the Notice of Abandonment had been sent in error and is being withdrawn and thus it is believed that the Notice is now moot.

### **B. Rejection Under 35 U.S.C. §112, First Paragraph – Written Description**

The Action rejects claims 1, 2, 4-10 and 13 as lacking an adequate written description. In particular, the Action asserted a failure to adequately describe the invention because: (1) a lack of seed deposit comprising genes conferring resistance to glyphosate and glufosinate opens the possibility that the Applicants did not have possession of the claimed invention; and (2) the Applicants fail to describe which gene sequences encode proteins that confer resistance to glyphosate and glufosinate other than those described by U.S. Patent No. 6,177,617 and No. 5,710,368. It was additionally stated that a skilled artisan would not have recognized that Applicants were in possession of any other nucleic acid sequences that would encode polypeptides that confer resistance to said herbicides because a core polypeptide sequence and a